



General Assembly

February Session, 2004

Amendment

LCO No. 4335

HB0543904335SD0

Offered by:

SEN. SULLIVAN, 5th Dist.

SEN. FASANO, 34th Dist.

To: House Bill No. 5439

File No. 182

Cal. No. 380

"AN ACT CONCERNING THE CHIEF STATE'S ATTORNEY."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective October 1, 2004*) For purposes of sections
4 501 to 512, inclusive, of this act:

5 (1) "Crime" means a violation of chapter 949c or section 36b-4, 36b-6,
6 36b-16, 53-153, 53-451, 53a-122, 53a-138, 53a-147, as amended, 53a-148,
7 as amended, 53a-149, as amended, 53a-150, as amended, 53a-152, 53a-
8 153, 53a-154, 53a-158, 53a-159, 53a-160, as amended, 53a-161, as
9 amended, 53a-161a, 53a-161c, 53a-161d, 53a-215, 53a-252, 53a-276, 53a-
10 277 or 53a-291 of the general statutes or section 2, 3 or 4 of public act
11 03-156;

12 (2) "Property" includes, but is not limited to, documents, books,
13 papers, records, films, recordings and other tangible things;

14 (3) "Prosecuting official" means the Chief State's Attorney, a deputy
15 Chief State's Attorney or a state's attorney; and

16 (4) "Subpoena" means a subpoena ad testificandum or a subpoena
17 duces tecum, or both.

18 Sec. 502. (NEW) (*Effective October 1, 2004*) (a) In the investigation of
19 conduct that would constitute the commission of a crime, a
20 prosecuting official, in the performance of such official's duties during
21 such investigation, shall have the authority to compel by subpoena the
22 appearance and sworn testimony of witnesses and the production of
23 property concerning the matter under investigation. No prosecuting
24 official may issue a subpoena under this section that (1) seeks to
25 compel testimony protected by the attorney-client privilege or the
26 production of property constituting attorney work product, or (2)
27 seeks to compel testimony or the production of property that
28 constitutes confidential communications or the records thereof which
29 are deemed privileged and protected from disclosure under state or
30 federal law, including the common law, including, but not limited to,
31 confidential communications, and the records thereof, made to a
32 clergyman, psychiatrist or substance abuse counselor. No prosecuting
33 official may issue a subpoena under this section unless authorized by a
34 judge of the Superior Court pursuant to section 503 of this act.

35 (b) In any matter in which a person has been arrested and criminal
36 charges are pending against such person, the appearance and
37 testimony of witnesses and the production of property shall be
38 governed by the court pursuant to the rules of discovery and shall not
39 be subject to the issuance of a subpoena under this section.

40 Sec. 503. (NEW) (*Effective October 1, 2004*) (a) A prosecuting official
41 who seeks to issue a subpoena under section 502 of this act shall, by
42 personal presentation, submit an application to a judge of the Superior
43 Court. Such application shall include an affidavit sworn to by such
44 prosecuting official stating that such official:

45 (1) Has reasonable grounds to believe that a crime has been

46 committed, and the facts that form the basis for such belief;

47 (2) Has reasonable grounds to believe that the person to be
48 summoned to appear and give testimony or produce property has
49 information relevant and necessary to the investigation concerning the
50 alleged commission of a crime, and the facts that form the basis for
51 such belief;

52 (3) Has reasonable grounds to believe that the appearance and
53 testimony of such person or the production of property by such person
54 would not occur or be available without the issuance of a subpoena,
55 and the facts that form the basis for such belief;

56 (4) (A) Has made reasonable efforts, which efforts shall be set forth
57 and described in such affidavit, to secure such appearance, testimony
58 and property without recourse to a subpoena and those efforts have
59 been unsuccessful, or (B) has not made reasonable efforts to secure
60 such appearance, testimony and property without recourse to a
61 subpoena because making such reasonable efforts would significantly
62 hinder the investigation and the facts that form the basis for believing
63 that making such reasonable efforts would significantly hinder the
64 investigation; and

65 (5) Has reasonable grounds to believe that the testimony or property
66 being sought is not privileged under state or federal law.

67 (b) The judge shall review such application and affidavit and, in
68 determining whether the provisions of subsection (a) of this section
69 have been satisfied, shall not consider any evidence extrinsic to such
70 documents. If the judge finds that the provisions of subsection (a) of
71 this section have been satisfied, such judge may grant the application
72 for the issuance of a subpoena by such prosecuting official. The
73 subpoena shall be served upon the person not less than twenty-four
74 hours, excluding weekends and holidays, prior to the time scheduled
75 for such person's appearance, except that the judge may specify the
76 date or time that such subpoena shall be served upon the person,
77 which date or time shall be not less than twenty-four hours nor more

78 than seven days, excluding weekends and holidays, prior to the date
79 and time scheduled for such person's appearance. The prosecuting
80 official shall cause any application that is granted to be filed with the
81 clerk of the court where compliance with the subpoena is required.
82 Except as provided in subsection (c) of this section, the judge shall
83 order the court file, including the application and affidavit submitted
84 pursuant to subsection (a) of this section, be sealed as to the public and
85 not be subject to disclosure.

86 (c) Not later than twenty-four hours after the service of such
87 subpoena, a copy of the application and affidavit submitted by the
88 prosecuting official pursuant to subsection (a) of this section shall be
89 given to the person summoned. The judge may, by order, dispense
90 with the requirement of giving a copy of the application and affidavit
91 to such person at such time if the prosecuting official files a detailed
92 affidavit with the judge that demonstrates to the judge that (1) the
93 personal safety of a confidential informant would be jeopardized by
94 the giving of a copy of the application and affidavit at such time, (2)
95 the issuance of the subpoena is part of a continuing investigation that
96 would be adversely affected by the giving of a copy of the application
97 and affidavit at such time, or (3) the giving of such application and
98 affidavit at such time would require disclosure of information or
99 material prohibited from being disclosed by chapter 959a of the
100 general statutes. If the judge dispenses with the requirement of giving
101 a copy of the application and affidavit at such time, such order shall
102 not affect the right of the person summoned to obtain such copy at any
103 subsequent time. No such order shall limit the disclosure of such
104 application and affidavit to the attorney for a person arrested in
105 connection with or subsequent to the issuance of the subpoena unless,
106 upon motion of the prosecuting official within two weeks of such
107 person's arraignment, the court finds that the state's interest in
108 continuing nondisclosure substantially outweighs the defendant's
109 right to disclosure. Any order dispensing with the requirement of
110 giving a copy of the application and accompanying affidavit to the
111 person summoned not later than twenty-four hours after the issuance

112 of the subpoena shall be for a specific period of time, not to exceed two
113 weeks beyond the date the subpoena is issued. Within that time period
114 the prosecuting official may seek an extension of such period.

115 Sec. 504. (NEW) (*Effective October 1, 2004*) (a) Any subpoena issued
116 pursuant to sections 501 to 512, inclusive, of this act shall (1) compel
117 only the appearance and sworn testimony of witnesses and the
118 production of property relevant and necessary to the investigation
119 being conducted, (2) specify with reasonable particularity any property
120 to be produced, and (3) require only the production of documents or
121 records covering a reasonable period of time.

122 (b) Any subpoena issued pursuant to sections 501 to 512, inclusive,
123 of this act shall contain a notice advising the person summoned of the
124 following: (1) The purpose of the investigation, (2) whether such
125 person is a target or possible target of the investigation, (3) that such
126 person has the right not to be compelled to give evidence against
127 himself or herself, (4) that such person has the right to have counsel
128 present and to consult with such counsel and, if such person is
129 indigent, to have counsel appointed to represent him or her, (5) that, if
130 such person is under eighteen years of age, such person has the right
131 to have such person's parent or parents or guardian present unless the
132 judge presiding over the proceeding excludes such parent or parents
133 or guardian for good cause shown, and (6) that such person has the
134 right to file a motion to quash or modify the subpoena.

135 Sec. 505. (NEW) (*Effective October 1, 2004*) Any subpoena issued
136 pursuant to sections 501 to 512, inclusive, of this act shall compel the
137 witness to appear and testify or produce the property in the presence
138 of a judge at a specified location in a courthouse in the judicial district
139 where the incident or incidents subject to investigation are alleged to
140 have occurred or, if the investigation is being conducted by a
141 prosecuting official of a judicial district other than the judicial district
142 where the incident or incidents subject to investigation are alleged to
143 have occurred, in a courthouse in that judicial district.

144 Sec. 506. (NEW) (*Effective October 1, 2004*) (a) If any subpoena is
145 issued pursuant to sections 501 to 512, inclusive, of this act for the
146 production of the medical records, including psychiatric and substance
147 abuse treatment records, of a person, the prosecuting official shall give
148 written notice of the issuance of such subpoena to such person. Such
149 person shall have standing to file a motion to quash the subpoena in
150 accordance with section 509 of this act.

151 (b) All medical records, including psychiatric and substance abuse
152 treatment records, that are produced pursuant to a subpoena issued
153 pursuant to sections 501 to 512, inclusive, of this act, shall be
154 designated as confidential records and maintained in a confidential
155 manner at the office of the prosecuting official conducting the
156 investigation until an arrest is made as a result of the investigation.
157 Each prosecuting official shall establish procedures for the storage of
158 such records that will ensure the confidentiality of such records.

159 (c) All medical records, including psychiatric and substance abuse
160 treatment records, obtained by a prosecuting official as a result of the
161 issuance of a subpoena pursuant to sections 501 to 512, inclusive, of
162 this act may be used only for the purpose of the investigation of the
163 criminal conduct that is the subject of such subpoena.

164 Sec. 507. (NEW) (*Effective October 1, 2004*) (a) Whenever a subpoena
165 is issued pursuant to sections 501 to 512, inclusive, of this act, the
166 prosecuting official shall, not later than twenty-four hours after service
167 of the subpoena, excluding weekends and holidays, give written notice
168 of the issuance of the subpoena to the presiding judge for criminal
169 matters in the courthouse where compliance with the subpoena is
170 required. Such notice shall include the identity of the person and, if the
171 production of property is compelled, a description of the property.
172 Such notice shall be confidential and not subject to disclosure. The
173 failure to give such notice shall not invalidate the subpoena. Such
174 presiding judge shall assign a judge of the Superior Court to preside
175 over the proceeding. The assignment of such judge shall be
176 confidential and not subject to disclosure. The judge assigned to

177 preside over the proceeding shall be present at all times during the
178 proceeding. The proceeding shall not be open to the public. The judge
179 assigned to preside over the proceeding may, for good cause shown,
180 which may include a showing, after inquiry by such judge, that such
181 person has not had a reasonable opportunity to consult an attorney,
182 grant a continuance for such period as such judge deems necessary.

183 (b) Prior to any witness being questioned, the prosecuting official
184 shall, on the record, advise such person of the following: (1) The
185 purpose of the investigation, (2) whether such person is a target or
186 possible target of the investigation, (3) that such person has the right
187 not to be compelled to give evidence against himself or herself, (4) that
188 such person has the right to have counsel present and to consult with
189 such counsel and, if such person is indigent, to have counsel appointed
190 to represent him or her, and (5) that, if such person is under eighteen
191 years of age, such person has the right to have such person's parent or
192 parents or guardian present unless the judge presiding over the
193 proceeding excludes such parent or parents or guardian for good cause
194 shown. The presiding judge shall assure that such rights are not
195 infringed.

196 (c) If the person summoned is under eighteen years of age and the
197 judge presiding over the proceeding excludes the parent or parents or
198 guardian of such person from such proceeding for good cause shown,
199 such judge shall appoint a guardian ad litem for such person prior to
200 the commencement of any questioning.

201 (d) A court reporter or assistant court reporter shall make a record
202 of the proceeding. The record of the proceeding shall be sealed and not
203 subject to disclosure, except that any witness who appeared and
204 testified shall be allowed access, at all reasonable times, to the record
205 of such witness' own testimony and shall have the right to receive a
206 copy of the transcript of the record of such testimony.

207 Sec. 508. (NEW) (*Effective October 1, 2004*) If any witness properly
208 summoned fails to appear or to produce any property specified in the

209 subpoena or, if having appeared, fails to answer any proper question,
210 the prosecuting official may apply to a judge of the Superior Court in
211 the judicial district as provided in section 505 of this act requesting the
212 issuance of a *capias* or an order of contempt, as appropriate, with
213 respect to such witness. The application of the prosecuting official and
214 the order of the court shall be sealed as to the public and not be subject
215 to disclosure. The hearing on the application shall not be open to the
216 public.

217 Sec. 509. (NEW) (*Effective October 1, 2004*) (a) Whenever a subpoena
218 has been issued to compel the appearance and testimony of a witness
219 or the production of property pursuant to sections 501 to 512,
220 inclusive, of this act, the person summoned may file a motion to quash
221 the subpoena with the clerk of the court for the judicial district as
222 provided in section 505 of this act. No fees or costs shall be assessed.

223 (b) The party filing the motion to quash shall be designated as the
224 plaintiff, and shall be described as "John Doe", "Jane Doe" or some
225 other alias, and the prosecuting official shall be designated as the
226 defendant.

227 (c) The motion, upon its filing, shall be sealed as to the public. The
228 motion shall be referred to the presiding criminal judge of the court for
229 hearing or for assignment to another judge for hearing. Unless
230 otherwise ordered by the judge conducting the hearing, the hearing
231 shall be conducted in camera and the file on the motion shall be sealed
232 as to the public, subject to further order of the court.

233 (d) The motion shall be expeditiously assigned and heard. The date
234 and time of the hearing shall be established by the clerk after
235 consultation with the judge assigned to conduct the hearing. The clerk
236 shall give notice to the parties of the hearing so scheduled.

237 (e) A judge may quash or modify any subpoena issued pursuant to
238 sections 501 to 512, inclusive, of this act for any just cause as may be
239 found by such judge or in recognition of any privilege established
240 under law.

241 Sec. 510. (NEW) (*Effective October 1, 2004*) (a) In any investigation
242 conducted pursuant to sections 501 to 512, inclusive, of this act, a
243 prosecuting official may apply to a judge of the Superior Court for an
244 order granting immunity from prosecution to any person whom the
245 state calls or intends to call as a witness if the prosecuting official finds
246 that the testimony of the person is necessary to the investigation of the
247 case. Such immunity may provide that the person will not be
248 prosecuted or subjected to any penalty or forfeiture (1) for or on
249 account of any testimony given or evidence produced by such person,
250 or for or on account of any evidence discovered as a result of or
251 otherwise derived from testimony given or evidence produced by such
252 person, or (2) for or on account of any transaction, matter or thing
253 concerning which such person gives testimony or produces evidence.
254 A person who receives immunity under this subsection shall not be
255 immune from prosecution for perjury or contempt committed while
256 giving such testimony or producing such property.

257 (b) No person who has been properly served with a subpoena
258 pursuant to sections 501 to 512, inclusive, of this act and receives
259 immunity under subsection (a) of this section, shall be excused from
260 appearing and testifying or producing any property before the
261 prosecuting official concerning an investigation pursuant to sections
262 501 to 512, inclusive, of this act upon the ground or for the reason that
263 the testimony or property required of such person may tend to convict
264 such person of a crime or subject such person to a penalty or forfeiture.

265 Sec. 511. (NEW) (*Effective October 1, 2004*) All information and
266 property obtained by a prosecuting official as a result of the issuance
267 of a subpoena pursuant to sections 501 to 512, inclusive, of this act
268 shall be confidential and not subject to disclosure, except (1) such
269 information and property as should, in the opinion of such official, be
270 used or disclosed in the performance of the official duties of such
271 official, or (2) as otherwise required by law or court order. Any
272 exculpatory information obtained with respect to any person shall be
273 disclosed to such person as required by law.

274 Sec. 512. (NEW) (*Effective October 1, 2004*) All property produced as
275 a result of the issuance of a subpoena pursuant to sections 501 to 512,
276 inclusive, of this act shall be returned to the person from whom it was
277 received if no criminal prosecution is commenced involving the use of
278 such property or shall be otherwise disposed of as provided by law.

279 Sec. 513. Section 51-296 of the general statutes is repealed and the
280 following is substituted in lieu thereof (*Effective October 1, 2004*):

281 (a) In any criminal action, in any habeas corpus proceeding arising
282 from a criminal matter, in any extradition proceeding, [or] in any
283 delinquency matter or in any proceeding in which a witness has been
284 summoned by a subpoena issued pursuant to section 502 of this act,
285 the court before which the matter is pending shall, if it determines after
286 investigation by the public defender or [his] the public defender's
287 office that a defendant or a witness summoned by a subpoena issued
288 pursuant to section 502 of this act is indigent as defined under this
289 chapter, designate a public defender, assistant public defender or
290 deputy assistant public defender to represent such indigent defendant
291 or witness, unless, in a misdemeanor case, at the time of the
292 application for appointment of counsel, the court decides to dispose of
293 the pending charge without subjecting the defendant to a sentence
294 involving immediate incarceration or a suspended sentence of
295 incarceration with a period of probation or the court believes that the
296 disposition of the pending case at a later date will not result in a
297 sentence involving immediate incarceration or a suspended sentence
298 of incarceration with a period of probation and makes a statement to
299 that effect on the record. If it appears to the court at a later date that, if
300 convicted, the sentence of an indigent defendant for whom counsel has
301 not been appointed will involve immediate incarceration or a
302 suspended sentence of incarceration with a period of probation,
303 counsel shall be appointed prior to trial or the entry of a plea of guilty
304 or nolo contendere.

305 (b) In the case of codefendants, the court may appoint one or more
306 public defenders, assistant public defenders or deputy assistant public

307 defenders to represent such defendants or may appoint counsel from
308 the trial list established under section 51-291.

309 (c) Prior to [a defendant's appearance in court] the appearance in
310 court of a defendant in any matter specified in subsection (a) of this
311 section or of a witness summoned by subpoena issued pursuant to
312 section 502 of this act, a public defender, assistant public defender or
313 deputy assistant public defender, upon a determination that the
314 defendant or witness is indigent pursuant to subsection (a) of section
315 51-297, shall be authorized to represent the defendant or witness until
316 the court appoints counsel for such defendant or witness.

317 Sec. 514. (NEW) (*Effective October 1, 2004*) On October 1, 2005, and
318 annually thereafter, the Chief State's Attorney shall submit a report, in
319 accordance with the provisions of section 11-4a of the general statutes,
320 to the joint standing committee of the General Assembly having
321 cognizance of matters relating to criminal law and procedure
322 concerning the issuance of subpoenas pursuant to sections 501 to 512,
323 inclusive, of this act in the preceding year. The report shall include the
324 following information: (1) The number of applications submitted for
325 the issuance of a subpoena, and the number of applications granted or
326 denied, (2) the statutory offense or offenses allegedly committed that
327 were the subject of the investigation, (3) the number of motions to
328 quash a subpoena that were filed, and the number of motions granted
329 or denied, (4) the number of orders granting a witness immunity from
330 prosecution, (5) the number of investigations concluded and the final
331 result of such investigations, and (6) the status of any criminal
332 prosecution resulting from an investigation."